The Supreme Court of the United States.

THE DRED SCOTT CASE.

The Official Report.

[CONTINUED.]

We have made this particular examination into the legislative and judicial action of Connecticut, because, from the early hostility it displayed to the slave trade on the coast of Africa, we may expect to find the laws of that State as lement and favorable to the subject-race as those of any other State in the Union; and if we find that at the time the constitution was adopted, they were not even there raised to the rank of citizens, but were still held and treated as property, and the laws relating to them passed with reference altogether to the interest and convenience of the white race, we shall hardly find them elevated to a higher rank anywhere else.

A brief notice of the laws of two other States, and we shall pass on to other considerations.

By the laws of New Hampshire, collected and finally passed in 1815, no one was permitted to be enrolled in the militia of the State but free white citizens; and the same provision is found in a subsequent collection of the laws made in 1855. Nothing could more strongly mark the entire repudiation of the African race. The alien is excluded, because, being born in a foreign country, he cannot be a member of the community until he is naturalized. But why are the African race, born in the State, not permitted to share in one of the highest duties of the citizen? The answer is obvious: he is not, by the institutions and laws of the State, numbered among its people. He forms no part of the sovereignty of the State, and is not therefore called on to uphold and defend it.

Again, in 1822 Rhode Island, in its revised code, passed a law forbidding persons who were authorized to join persons in marriage from joining in marriage any white person with any negro, Indian, or mulatto, under the

Again, in 1822 Rhode Island, in its revised code, passed a law forbidding persons who were authorized to join persons in marriage from joining in marriage any white person with any negro, Indian, or mulatto, under the penalty of two hundred dollars, and declaring all such marriages absolutely null and void; and the same law was again re-enacted in its revised code of 1844. So that, down to the last-mentioned period, the strongest mark of inferiority and degradation was fastened upon the African race in that State.

It would be impossible to enumerate and compress in the space usually allotted to an opinion of a court the various laws, marking the condition of this race, which were passed from time to time after the revolution, and before and since the adoption of the constitution of the United States. In addition to those already referred to, it is sufficient to say, that Chancellor Kent, whose accu-

United States. In addition to those already referred to it is sufficient to say, that Chancellor Kent, whose accuracy and research no one will question, states in the sixth edition of his Commentaries, (published in 1848, 2 vol., 258, note b,) that in no part of the country except Maine did the African race, in point of fact, participate equally with the whites in the exercise of civil and political

rights.
The legislation of the States therefore shows, in a man-The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the constitution, they looked upon convention to form the constitution, they looked upon them as a portion of their constitution, they looked upon them as a portion of their constituents, or designed to in-clude them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that the citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union which every one of them denied within the limits of its own dominion. More especially it cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a constitution which
might compel them to receive them in that character
from another State. For if they were so received, and
entitled to the privileges and immunities of citizens, it
would exempt them from the operation of the special
laws and from the police regulations which they considered to be necessary for their own safety. It would give
to persons of the negro trace, who were recognised as citizens in any one State of the Union, the right to enter
every other State whenever they pleased, singly or in
companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where
they pleased at every hour of the day or night without
molestation, unless they committed some violation of law cially it cannot be believed that the large slave they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in pri-vate upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the

of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

It is impossible, it would seem, to believe that the great men of the slaveholding States, who took so large a share in framing the constitution of the United States, and exercised so much influence in procuring its adoption, could have been so forgetful or regardless of their own safety and the safety of those who trusted and confided in them. Besides, this want of foresight and care would have been terly inconsistent with the caution displayed in providing for the admission of new members into this political family; for when they gave to the citizens of each State the privileges and immunities of citizens in the several States, they at the same time took from the several States.

es, they at the same time took from the several States of naturalization, and confined that power exthe power of naturalization, and confined that power ex-clusively to the federal government. No State was will-ing to permit another State to determine who should or should not be admitted as one of its citizens, and entitled to demand equal rights and privileges with their own peo-ple within their own territories. The right of naturaliza-States, and confided to the federal government. And this power granted to Congress to establish an uniform rule of naturalization is, by the well-understood meaning of the word, confined to persons born in a foreign coun-try, under a foreign government. It is not a power to raise to the rank of a citizen any one born in the Inited States, who, from highly argentage, by the United States, who, from birth or parentage, by the laws of the country, belongs to an inferior and sub-ordinate class; and when we find the States guard-ing themselves from the indiscreet or improper admis-sion by other States of emigrants from other countries, by giving the power exclusively to Congress, we cannot fail to see that they could never have left with the States a much more important power—that is, the power of transforming into citizens a numerous class of persons, who in that character would be much dangerous to the peace and safety of a large portion Union than the few foreigners one of the States might improperly naturalize. The constitution upon its adoption obviously took from the States all power by subsequent legislation to introduce as a citizen into political family of the United States any one, no mat-where he was born, or what might be his character or ter where he was ton,

or and it gave to Congress the power to confer this character upon those only who were born outside of the dominions of the United States; and no law of a State, therefore, passed since the constitution was adopted, can give any right of citizenship outside of its own

use similar to the one in the constitution, in rela-A clause similar to the one in the constitution, in relation to the rights and immunities of citizens of one State in the other States, was contained in the Articles of Confederation. But there is a difference of language, which is worthy of note. The provision in the Articles of Confederation was, "that the free inhabitants of each of the States, paupers, vagabonds, and fugitives from justice excepted, should be entitled to all the privileges and immunities of free citizens in the several States."

It will be observed that, under this confederation, each State had the right to decide for itself, and in its own tribunals, whom it would acknowledge as a free inhabitant.

State had the right to decide for itself, and in its own tribunals, whom it would acknowledge as a free inhabitant of another State. The term free inhabitant, in the generality of its terms, would certainly include one of the African race who had been manumitted. But no example, we think, can be found of his admission to all the privileges of citizenship in any State of the Union after these articles were formed, and while they continued in force; and, notwithstanding the generality of the words "free inhabitants," it is very clear that, according to their accepted meaning in that day, they did not include the African race, whether free or not: for the fifth section of the ninth article provides that Congress should have the power "to agree upon the number of land forces to be raised, and to make requisitions from each State for its such State, who is not a citizen even of the State in which he registed are allowed to, vote. And the State mulatices, but that does not make them citizens of the State, and still less of the United States. And the provision in the constitution giving privileges and immunities in other State in which he resides may then, unquestionably, determine his status or condition, and place him among the class of persons who are not recognised as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities

and the subject; the free and the subjugated races. The latter were not even counted when the inhabitants of a State were to be imbodied in proportion to its numbers for

But, although this clause of the Articles of Confederation is the same in principle with that inserted in the constitution, yet the comprehensive word inhabitant, which might be construed to include an emancipated slave, is omitted; and the privilege is confined to cites of the State. And this alteration in words would hardly have been made unless a different meaning was intended to be conveyed, or a possible doubt removed. The just and fair inference is, that as this privilege was about to be placed under the protection of the general government, and the words expounded by its tribunals, and all power in relation to it taken from the State and its courts, it was deemed prudent to describe with precision and caution the persons to whom this high privilege was given—and the word citizen we on that account substituted for the words free inhabitant. The word citizen excluded, and no doubt intended to exclude, foreigners who had not become citizens of some one of the States when the constitution was adopted; and also every description of persons who were not fully recognised as citizens in the several States. This, upon any fair construction of the instruments to which we have referred, was evidently the object and purpose of this change of words.

To all this mass of proof we have still to add that Congress has repeatedly legislated upon the same construction of the constitution that we have given. Three laws, two of which were passed almost immediately after the government went into operation, will be abundantly sufficient to show this. The two first are particularly worthy of notice, because many of the men who assisted in framing the constitution, and took an active part in procuring its adoption, were then in the halls of legislation, and certainly understood what they meant when they used the words "people of the United States" and "citizen" in that well-considered instrument.

The first of these exts is the naturalization law, which was passed at the second session of the first Congress.

"citizen" in that well-considered instrument.

The first of these acts is the naturalization law, which was passed at the second session of the first Congress, March 26, 1790, and confines the right of becoming cit-

March 26, 1799, and confines the right of becoming cit-izens "to aliens being free white persons."

Now, the constitution does not limit the power of Con-gress in this respect to white persons. And they may, if they think proper, authorize the naturalization of any one, of any color, who was born under allegiance to an-other government. But the language of the law above quoted shows that citizenship at that time was perfectly understood to be confined to the white race; and that

ment.

Congress might, as we before said, have authorized the naturalization of Indians, because they were aliens and foreigners. But, in their then untutored and savage state, no one would have thought of admitting them as citizens in a civilized community. And, moreover, the atrocities they had but recently committed, when they were the allies of Great Britain in the revolutionary war, were yet fresh in the recollection of the people of the United States, and they were even then granding themselves ted States, and they were even then guarding themselves against the threatened renewal of Indian hostilities. No one supposed then that any Indian would ask for, or was able of enjoying, the privileges of an American citi-, and the word white was not used with any particu-

lar reference to them.

Neither was it used with any reference to the African race imported into or born in this country; because Congress had no power to naturalize them, and therefore there was no necessity for using particular words to exclude

It would seem to have been used merely because it followed out the line of division which the constitution has drawn between the citizen race, who formed and held the government, and the African race, which they held in subjection and slavery, and governed at their own pleas-

Another of the early laws of which we have spoken is the first militia law, which was passed in 1792, at the first session of the second Congress. The language of this law is equally plain and significant with the one just mentioned. It directs that every "free able-bodied white male citizen" shall be enrolled in the militia. The word white is evidently used to exclude the African race, and the word "citizen" to exclude unnaturalized foreigners; the latter forming no part of the sovereignty, owing it no allegiance, and therefore under no obligation to defend it. The African race, however, born in the country, did owe allegiance to the government, whether they were slave or free; but it is repudiated, and rejected from the duties and obligations of citizenship in marked language. The third act to which we have alluded is even still

more decisive; it was passed as late as 1813, (2 Stat., 809.) and it provides: "That from and after the termination of the war in which the United States are now engaged with Great Pritain, it shall not be lawful to employ, on board of any public or private vessels of the United States, any person or persons except citizens of the United States, or persons of color, natives of the United

Here the line of distinction is drawn in express words. Persons of color, in the judgment of Congress, were not included in the word citizens, and they are described as an ther and different class of persons, and authorized to be employed, if born in the United States.

And even as late as 1820, (chap. 104, sec. 8,) in the And even as late as 1820, (chap. 104, sec. 8.) in the charter to the city of Washington, the corporation is authorized "to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes," thus associating them together in its legislation; and after prescribing the punishment that may be inflicted on the slaves, proceeds in the following words: "And to punish such free negroes and mulattoes by penalties not exceeding twenty dollars for any one offence; and in case of the inability of any such free negroe or mulatto to pay any such penalty and cost thereon, to cause him or her to be confined to labor for any time not exceeding six calendar months." And in a subsequent part of the same section, the act authorizes the corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city."

This law, like the laws of the States, shows that this class of persons were governed by special legislation di-

class of persons were governed by special legislation di-rected expressly to them, and always connected with provisions for the government of slaves, and not with those for the government of free white citizens. And after such an uniform course of legislation as we have stated, by the colonies, by the States, and by Congress, running through a period of more than a century, it would seem that to call persons thus marked and stigma-tized, "citizens" of the United States, "fellow-citizens," a constituent part of the sovereignty, would be an abuse of terms, and not calculated to exalt the character of an

American citizen in the eyes of other nations.

The conduct of the executive department of the govern ment has been in perfect harmony upon this subject with this course of legislation. The question was brought offi-cially before the late William Wirt, when he was the Atded that the words "citizens of the United States" ded that the words "citizens of the United States" were used in the acts of Congress in the same sense as in the constitution; and that free persons of color were not citizens, within the meaning of the constitution and laws; and this opinion has been confirmed by that of the late Attorney General, Caleb Cushing, in a recent case, and acted upon by the Secretary of State, who refused to grant passports to them as "citizens of the United States".

States."
But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; tifled to be recognised there as a citizen, altho State may measure his rights by the rights which it allows to persons of a like character or class resident in the State, and refuse to him the full rights of citizenship. This argument overlooks the language of the provision in the constitution of which we are speaking.

Undoubtedly, a person may be a citizen—that is, a

in the constitution of which we are speasing.

Undoubtedly, a person may be a cilizen—that is, a member of the community who form the sovereignty—although he exercises no share of the political power, and is incapacitated from holding particular offices. Women and minors, who form a part of the political family, cannot vote; and when a property qualification is required to vote or hold a particular office, those who have not the political state of the political state. the necessary qualification cannot vote or hold the office, yet they are citizens.

race; and may deny him the privileges and immunities enjoyed by its citizens.

But so far as mere rights of person are concerned, the

State were to be imbodied in proportion to its numbers for the general defence. And it cannot for a moment be supposed that a class of persons thus separated and rejected from those who formed the sovereignty of the States were yet intended to be included under the words "free inhabitants," in the preceding article, to whom privileges and immunities were so carefully secured in every State.

But so far as mere rights of person are concerned, the provision in question is confined to citizens of a State who is construction would abrogate residence there. It gives them no political rights in the State, as to voting or holding office, or in any other refiers of the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This particular is the particular of the popular opinion or passion of the day. This state, as the provision in question is confined to citizens of a State who is construction would abrogate residence there. It gives them no political rights in the State, as to voting or holding office, or in any other regions of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of the United was voted on and adopted by the people of

meaning of the constitution of the United States, then, whonever he goes into another State, the constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a State, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities under the paramount authority of the federal government, and its courts would be bound to maintain and enforce them, the constitution and laws of the State to the contrary notwithstanding. And if the States to the contrary notwi ing of the constitution of the United States, then,

him. This is evidently not the construction or meaning of the clause in question. It guaranties rights to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African mace were not included under the name of citizens of a State, and were not in the contemplation of the framers of the constitution when these privileges and immunities were provided for the protection of the citizen in other States.

The case of Legrand w. Darnall (2 Peters, 664) has been referred to for the purpose of showing that this court has decided that the descendant of a slave may sue as a citizen in a court of the United States; but the case itself shows that the question did not arise and could not have arisen in the case.

shows that the question did not arise and could not have arisen in the case.

It appears from the report that Darnall was born in Maryland, and was the son of a white man by one of his slaves, and his father executed certain instruments to manumit him, and devised to him some landed property in the State. This property Darnall afterwards sold to Legrand, the appellant, who gave his notes for the purchase-money. But, becoming afterwards apprehensive that the appellee had not been emancipated according to the laws of Maryland, he refused to pay the notes until he could be better satisfied as to Darnall's right to convey. Darnall, in the mean time, had taken up his residence in Pennsylvania, and brought suit on the notes, and recovered judgment in the circuit court for the district of Marylands. ered judgment in the circuit court for the district of Ma

The whole proceeding, as appears by the report, was an The whole proceeding, as appears by the report, was an amicable one; Legrand being perfectly willing to pay the money, if he could obtain a title, and Darmall not wishing him to pay unless he could make him a good one. In point of fact, the whole proceeding was under the direction of the counsel who argued the case for the appellee, who was the mutual friend of the parties, and confided in by both of them, and whose only object was to have the rights of both parties established by judicial decision in the most speedy and least expensive manner.

Legrand, therefore, raised no objection to the jurisdiction of the court in the suit at law, because he was himself anxious to obtain the judgment of the court upon his

self anxious to obtain the judgment of the court upon his title. Consequently, there was nothing in the record be-fore, the court to show that Darnall was of African descent, and the usual judgment and award of execution was entered. And Legrand thereupon filed his bill on the equity side of the circuit court, stating that Darnall was born a slave, and had not been legally emancipated, and could not, therefore, take the land devised to him, nor make Legrand a good title; and praying an injunction to restrain Darnall from proceeding to execution on the judgment, which was granted. Darnall answered, averring in his answer that he was a few rows a few rows and the proceeding to the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error—and this, too, whether there is a plea in abatement or not.

The objection appears to have arisen from confounding ring in his answer that he was a free man, and capable of conveying a good title. Testimony was taken on this point, and at the hearing the circuit court was of opinion

was first brought before the court upon the bill in equity. The suit at law had then passed into judgment and award of execution, and the circuit court, as a court of law, of execution, and the circuit court, as a court of law, had no longer any authority over it. It was a valid and legal judgment, which the court that rendered it had not the power to reverse or set aside. And unless it had jurisdiction as a court of equity to restrain him from using its process as a court of law, Darnall, if he thought proper, would have been at liberty to proceed on his judgment, and compel the payment of the money, although the allegations in the bill were true, and he was incapable of making at the No other court could have entitled big. making a title. No other court could have enjoined him, for certainly no State equity court could interfere in that way with the judgment of a circuit court of the United

making a title. No other court could have enjoined him, for certainly no State equity court could interfere in that way with the judgment of a circuit court of the United States.

But the circuit court as a court of equity certainly had equity jurisdiction over its own judgment as a court of the parties; and had not only the right, but it was its duty—no matter who were the parties in the judgment—to prevent them from proceeding to enforce it by execution, if the court was satisfied that the money was not justly and equitably due. The ability of Darnall to convey did not depend upon his citizenship, but upon his title to freedom. And if he was free, he could hold and convey property by the laws of Maryland, although he was not a citizen. But if he was by law still a slave, he could not. It was, therefore, the duty of the court, sitting as a court of equity in the latter case, to prevent him from using its process, as a court of common law, to compel the payment of the court was the appellate court in the court of common law, to compel the payment of the court is in to a plea to the jurisdiction, is as grave an error as a court can commit. The plea in abatement is not a plea to the jurisdiction, this to the jurisdiction, of this court, but to the jurisdiction, the circuit court committed an error, in deciding that it had jurisdiction, upon the facts in the case, admitted by the pleading. It is the duty of the case, admitted by the pleading. It is the duty of the appellate court therefore exercises the power for which alone appellate court below for this cror. It exercises its proper and appropriate in jurisdiction, is as grave an error as a court of a plea to the jurisdiction, the circuit court committed an error, in deciding that it had jurisdiction, the case, admitted by the pleading. It is the duty of the case, admitted by the pleading. It is the duty of the appellate court of the court was satisfied that the money was not justly and equitably due. The ability of Darnall to convey did not depend on the facts a court of common law, to compel the payment of the purchase-money, when it was evident that the purchaser must lose the land. But if he was free, and could make a title, it was equally the duty of the court not to suffer Legrand to keep the land, and refuse the payment of the money, upon the ground that Darnall was incapable of suing or being sued as a citizen in a court of the United States. The character or citizenship of the parties had States. The character or citizenship of the parties had no connexion with the question of jurisdiction, and the matter in dispute had no relation to the citizenship of Darnall. Nor is such a question alluded to in the opinion of the court.

Besides, we are by no means prepared to say that there are not many cases, civil as well as criminal, in which a circuit court of the United States may exercise jurisdiction. tion, although one of the African race is a party; that broad question is not before the court. The question with which we are now dealing is, whether a person of the African race can be a citizen of the United States, and become thereby entitled to a special privilege, by virtue of his title to that character, and which, under the conof his title to that character, and which, under the con-stitution, no one but a citizen can claim. It is manifest that the case of Legrand and Darnall has no bearing on

The only two provisions which point to them and in-clude them treat them as property, and make it the duty of the government to protect it; no other power in rela-tion to this mee is to be found in the constitution; and as it is a government of special, delegated powers, no au-thority beyond these two provisions can be constitution-ally exercised. The government of the United States had no right to interfere for any other purpose but that of pro-tecting the rights of the owner. Leaving it altogether with tecting the rights of the owner, leaving it altogether with the several States to deal with this race, whether emanci-pated or not, as each State may think justice, humanity, and the interests and safety of society require. The States evidently intended to reserve this power exclusive

No one, we presume, supposes that any change in pub-c opinion or feeling, in relation to this unfortunate race. lic opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the con stitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be alto-gether inadmissible in any tribunal called on to interpret

gether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its neloption. It is not only the same in words, but the same in meaning, and delegates the same powers to the government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it speke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This

and upon a tuli and careful consideration of the sub-ject the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the circuit court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous.

plea in abatement is erroneous.

We are aware that doubts are entertained by some of We are aware that doubts are entertained by some of the members of the court whether the plea in abatement is legally before the court upon this writ of error; but if that plea is regarded as waived, or out of the case upon any other ground, yet the question as to the jurisdiction of the circuit court is presented on the face of the bill of exception itself, taken by the plaintiff at the trial; for he admits that he and his wife were born slaves, but on. nits that he and his wife were born slaves, but en he admits that he and his wife were born slaves, but en-deavors to make out his title to freedom and citizenship by showing that they were taken by their owner to cer-tain places, hereinafter mentioned, where slavery could not by law exist, and that they thereby became free, and upon their return to Missouri became citizens of that State.

Now, if the removal of which he speaks did not give them their freedom, then by his own admission he is still a slave; and whatever opinions may be entertained in favor of the citizenship of a free person of the African race, no one supposes that a slave is a citizen of the State or of the United States. If, therefore, the acts done by his owner did not make them free persons, he is still a slave, and certainly incanable of suine; in the character of slave, and certainly incanable of suine; in the character of slave, and certainly incapable of suing in the character of

The principle of law is too well settled to be disputed, that a court can give no judgment for either party where it has no jurisdiction; and if, upon the showing of Scott himself, it appeared that he was still a slave, the case ought to have been dismissed, and the judgment against him and in favor of the defendant for costs is, like that

on the plea in abatement, erroneous, and the suit, ought to have been dismissed by the circuit court for want of jurisdiction in that court.

But, berore we proceed to examine this part of the case, it may be proper to notice an objection taken to the judicial authority of this court to decide it; and it has been said that as this court has decided against the jurisdiction of the circuit court on the plea in abatement, it diction of the circuit court on the plea in abatement, it has no right to examine any question presented by the exception; and that anything it may say upon that part of the case will be extra-judicial, and mere obiter dicta. This is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a circuit court, and to reverse it for any error apparent on the record, whether it be the error of giving judg-

plea in abatement or not.

The objection appears to have arisen from confounding writs of error to a State court with writs of error to a circuit court of the United States. Undoubtedly, upon a writ of error to a State court, unless the record shows a that Darnall was a free man and his title good, and dissisted the injunction and dismissed the bill; and that decree was affirmed here, upon the appeal of Legrand.

Now, it is difficult to imagine how any question about the citizenship of Darnall, or his right to sue in that case. The fact that he was was of African descent was first brought before the country may first be sue in that States, are regulated by different laws, and stand upon entirely different principles. And in a writ of error to a circuit court of the United States, the whole record is before this court for examination and decision; and if the sum in controversy is large enough to give jurisdiction, it is not only the right, but it is the judicial duty of the court, to examine the whole case as presented by the record; and if it appears upon its face that any material error or errors have been committed by the court below, it. ror or errors have been committed by the court below, i is the duty of this court to reverse the judgment and re-mand the case. And certainly an error in passing a judg-ment upon the merits in favor of either party, in a case which it was not authorized to try, and over which it had

deprive the appellate court of the power of examining further into the record, and correcting any other material errors which may have been committed by the inferior errors which may have been committed by the interac-court. There is certainly no rule of law, nor any prac-tice, nor any decision of a court, which even questions this power in the appellate tribunal. On the contrary, it is the daily practice of this court, and of all appellate courts where they reverse the judgment of an inferior courts where they reverse the judgment of an inferior court for error, to correct by its opinions whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so where the

either side, and argued before the court.

In the case before us, we have already decided that the circuit court erred in deciding that it had jurisdiction upon the facts admitted by the pleadings. And it appears that, in the further progress of the case, it acted upon the erroneous principle it had decided on the pleadings, and gave judgment for the defendant, where, upon the facts admitted in the exception, it had no jurisdiction. that the case of Legrand and Darmall has no bearing on that question, and can have no application to the case now before the court.

This case, however, strikingly illustrates the consequences that would follow the construction of the constitution which would give the power contended for to a State. It would in effect give it also to an individual. For if the father of young Darmall had manumitted him in is lifetime, and sent him to reside in a State which recognised him as a citizen, he might have visited and sojourned in Maryland when he pleased, and as long as he pleased, as a citizen of the United States; and the State officers and tribunals would be compelled, by the paramount authority of the constitution, to receive him and treat him as one of its citizens, exempt from the laws and police of the State in relation to a person of that description, and allow him to enjoy all the rights and privileges of citizenship, without respect to the laws of Maryland, although such laws were deemed by it absolutely essential to its own safety.

The only two provisions which point to them and include them treat them as property, and make it the duty of the government to protect it; no other power in relation to this race is to be found in the constitution; and We are at a loss to understand upon what principle of law applicable to appellate jurisdiction it can be supposed that this court has not judicial authority to correct the last-mentioned error, because they had before corrected tion in the circuit court

scarcely be necessary to pursue such a question.

The want of jurisdiction in the court below may appear on the record without any plea in abatement. This is familiarly the case where a court of chancery has exercised jurisdiction in a case where the plaintiff had a plain and adequate remedy at law, and it so appears by the transcript when brought here by appeal. So, also, where it appears that a court of admiralty has exercised jurisdiction in a case belonging exclusively to a court of common law. In these cases there is no plea in abatement. And for the same reason, and upon the same prin-ciples, where the defect of jurisdiction is patent on the record, this court is bound to reverse the judgment, al-though the defendant has not pleaded in abatement to the risdiction of the inferior court.

The cases of Jackson es. Ashton and of Capron es. Van Noorden, to which we have referred in a previous part of this opinion, are directly in point. In the last-mentioned case, Capren brought an action against Van Noorden in a circuit court of the United States, without showing, by a circuit court of the United States, without showing, by the usual averaments of citizenship, that the court had ju-risdiction. There was no plea in abatement put in, and the parties went to trial upon the merits. The court gave judgment in favor of the defendant with costs. The plaintiff thereupon brought his writ of error, and this court reversed the judgment given in favor of the defend-ant, and remanded the case with directions to dispuise it, because it did not appear by the transcript that the circuit court had luxicilistics.

The case before us still more strongly imposes upon

What the construction was at that time we think can but in this case it does appear that the plaintiff was born ardly admit of doubt. We have the language of the slave; and if the facts upon which he relies have no But in this case it does appear that the plaintiff was born a slave; and if the facts upon which he relies have not made him free, then it appears affirmatively on the record that he is not a citizen, and consequently his suit against Sandford was not a suit between citizens of different States, and the court had no authority to pass any judgment between the parties. The suit ought, in this view of it, to have been dismissed by the circuit court, and its judgment in favor of Sandford is erreneous, and must be reversed.

It is true that the result either way, by dis

reversed.

It is true that the result either way, by dismissal or by a judgment for the defendant, makes very little, if any, difference in a pecuniary or personal point of view to either party. But the fact that the result would be very nearly the same to the partles in either form of judgment would not justify this court in sanctioning an error in the judgment which is patent on the record, and which, if sanctioned, might be drawn into precedent, and lead to serious mischief and injustice in some future suit.

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom.

The case, as he himself states it, on the record brought here by his writ of error, is this:

The plaintiff was a negro slave, belonging to Dr. Emerson, who was a surgeon in the army of the United States. In the year 1834 he took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Missouri to the military post at Rock Island, in the State of Missouri to the west bank of the Mississippi river, in the territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835 Harriet, who is named in the second said last-mentioned date until the year 1838.

said last-mentioned date until the year 1838.

In the year 1835 Harriet, who is named in the second count of the plaintiff s declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave, at said Fort Snelling, unto the said Dr. Emerson hereinbefore named. Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838. year 1838.

In the year 1836 the plaintiff and Harriet intermarried, at Fort Snelling, with the consent of Dr. Emerson, who then claimed to be their master and owner. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about four-teen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri,

Gipecy, north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about sever years old, and was born in the State of Missouri, at the military post called Jefferson Rarracks.

In the year 1838 said Dr. Emerson removed the plaintiff and said Harriet, and their said daughter Eliza, from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson said and convered the plaintiff and Harriet Eliza

son sold and conveyed the plaintiff, and Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them, and each of them,

In considering this part of the controversy, two qu this part of the controvers, two questions arise: 1. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2. If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above ad-We proceed to examine the first question

The act of Congress upon which the plaintiff relies de-clares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Con-gress was authorized to pass this law under any of the powers granted to it by the constitution; for if the au-thority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and ineapa-ble of conferring freedom upon any one who is held as a

this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the constitution which confers on Congress the power "to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States;" but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no ettled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a for-eign government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more

cy, and nothing more.

A brief summary of the history of the times, as well as the careful and measured terms in which the article is framed, will show the correctness of this proposition.

It will be remembered that from the commemcement of the revolutionary war scrious difficulties existed between the States in relation to the disposition of large and unsettled territories which were included in the charter-old limits of some of the States in relation to the disposition of large and limits of some of the States in could be sufficiently as the states of the States in could be sufficiently as the states of the States in the states.

unsettled territories which were included in the charterlaw, nor any praclaw, nor any

These difficulties caused gauch uncasiness during the war, while the issue was in some degree doubtful, and the future boundaries of the United States vet to be defined

future boundarles of the United States yet to be defined by treaty, if we achieved our independence.

The majority of the Congress of the Confederation obviously concurred in opinion with the State of Maryland, and desired to obtain from the States which claimed it a cession of this territory, in order that Congress might raise money on this security to carry on the war. This appears by the resolution passed on the 6th of Septential of the United States, both for the sake of peace and union among themselves and to maintain the public credit; and this was followed by the resolution of October 10, 1780, by which Congress nedered itself that if creent; and this was followed by the resolution of Octo-ber 10, 1780, by which Congress pledged itself that if the lands were ceded, as recommended by the resolution above mentioned, they should be disposed of for the com-mon benefit of the United States, and be settled and formed into distinct republican States, which should be-come members of the federal Union, and have the same rights of covereignty, and freedom and independence as rights of sovereignty, and freedom, and independent

her States. But these difficulties became much more serious after peace took place, and the boundaries of the United States were established. Every State, at that time, felt severely the pressure of its war debt; but in Virginia, and some other States, there were large territories of unsettled lands, the sale of which would enable them to discharge their obligations without much inconvenience; while other States, which had no such resource, saw before them many years of heavy and burdensome taxation; and the latter insisted, for the reasons before stated, that these unsettled lands should be treated as the common property of the States, and the proceeds applied to their common benefit. mmon benefit.
The letters from the statesmen of that day will show

how much this controversy occupied their thoughts, and the dangers that were apprehended from it. It was the disturbing element of the time, and fears were entertained

that it might dissolve the confederation by which the States were then united.

These fears and dangers were, however, at once removed when the State of Virginia, in 1784, voluntarily ecded to the United States the immense tract of country lying northwest of the river Ohio, and which was within the acknowledged limits of the State. The only object of the State in making this coveries were the total or the state in the control of the State in making this coveries were the state of the State in making this coveries were the state of the State in making this coveries were the state of the State in making this coveries were the state of the State in making this coveries were the state of the State in making this coveries were the state of the State in making this coveries were the state of the State. of the State in making this cession was to put an end to the threatening and exciting controversy, and to enable the Congress of that time to dispose of the lands, and appropriate the proceeds as a common fund for the common benefit of the States. It was not ceded, because it was inconvenient to the State to hold and govern it, nor from any expectation that it could be better or more conve-niently governed by the United States.

niently governed by the United States.

The example of Virginia was soon afterwards followed by other States, and, at the time of the adoption of the constitution, all of the States, similarly situated, had ceeled their unappropriated lands, except North Carolina and Georgia. The main object for which these cessions were desired and made was on account of their money value, and to put an end to a dangerous controversy, as to who was justly entitled to the proceeds when the lands The case before us still more strongly imposes upon this court the duty of examining whether the court below has not committed an error in taking jurisdiction and giving a judgment for costs in favor of the defendant; for in Capron 22. Van Noorden the judgment was reversed, because it did not appear that the parties were citizens of different States. They might or might not be.

## WASHINGTON CITY

WEDNESDAY MORNING, MAY 29, 1857

DEATH OF SENATOR BUTLER

Just as we were going to press we received a tele graphic despatch informing us of the death of the renerable and distinguished senator, Judge A.P. Butler, of South Carolina. We were not unprepared for this result. The news of his rapidly-failing strength had left us little hope for some days pust that he could recover. Still, the sad event is not the less regretted by his friends throughout the country and by that State he loved so well and served . faithfully.

Judge Butler was one of those rarely-gifted mes whose genius, chivalric temperament, and rare ele quence gave him a large and commanding influence in the senatorial body, and constituted him one of its leading members. His ardent, confiding, and honorable nature drew to him those troops of deeply-attached and admiring friends whose sympathies will be most painfully aroused at the news of his death. South Carolina has always been represented in the Senate of the United States by men of the loftiest talents, but even amongst those gifted sons of the South, few bank surpassed in ability and fidelity to the interests of his State and the country the venerable man whose death we now deplore.

WHAT ELSE COULD BE EXPECTED? We notice that several "republican" journals are complaining that the restraints which formerly prevail-

ed in society, and kept individuals within the line of

propriety, have given way, and a feeling of lawless

ness and disrespect for the laws and the authoritie who administer them is becoming alarmingly manifested. This is the natural fruit of "republicanism. That party commenced its career by a crusadagainst the constitution of the United States, and the laws enacted under it. Its press has devoted its columns to denouncing the compromises of the constitution, and securing resistance to the laws contemplated in, and sanctioned by, that poble instrunent, Courts and officers of justice fulfilling the duty of administering such laws have been stigmatized as monsters in human shape, who were unfit for their stations, or association with civilized society. To these considerations we may add, that this same party has been the author of so much reckless legislation that the judiciary have been much occupied in considering and preventing that which was unconstitutional from being enforced, and thus controlling the destinies of the people. This party is now engaged, with all its energy, in seeking to overthrow the adjudications of our highest tribunals, and bring them into contempt, and in enforcing laws almost universally conceded to be unconstitutional, as well as unjust and tyrannical, The state of things complained of naturally flows from this course of policy. The "republicans" are the authors of the consequences of which they complain. They labor at prostrating the bulwarks which protect society, and then complain at their tottering condition. They seek to overthrow the constitution and laws, and to cover with obloquy their lawful expounders and defenders, and then express their astonishment and regret that their influence is diminishing and hardly felt. The cause and the consequences are too palpable to be subject to doubt. The remedy rests with that party. Let them give over their crusade against our institutions, constitution and laws, and the ministers of justice, and teach their followers to respect and protect them. If they fail to do this, they can only expect that the public diseases of which they complain will increase, and end in the most fatal consequences, and they ought to be held responsible for the result. The following is an extract from a sermon deliver-

ed on the 11th of March by Elder Orson Hyde, and published in the Deseret News:

"No man or woman among us, not of our faith, that behaves himself and violates not our laws and regulation, has any occasion to fear molestation. But if he or she do violate them, and will not desist, I cannot couch for his safety, member of our church or not; neither can I mune his house to stand."

The following is from the New York Tribune of May 20th, edited by Elder Horace Greeley:

"The city of New York is in a state of anarchy, and in danger at any moment of conflagration and rap only the police act, but all laws and the set at defiance, and nothing stands between the hones man and the knife of the assassin—between his ware house and the torch of the incendiary—but the vague in pression that the first overt act of unusual r ecould be the signal for a vigilance committee to purge the metropolis, from the City Hall to Harlem river, according to the bloody and merciless code recently executed in San Francisco."

Both these pious elders (says the Albany Argus) refrain from saying they will violate the law. But they point to the lives and property of citizens on one side, and the mob headed by the banded Danites or a secretly-sworn vigilance committee on the other; and they leave the objects of the threats to draw their own conclusions.

But the meaning of this language is in both cases an incitement to illegal conspiracy, to mob usurpation and murder; and the authors knew it at the time, and resorted to it in order to excite the fears of the timid, as a prelude to the reign of terror at which they aim.

THE PRESENT VIELD OF COLD

The annual reports from the director of the Mint have The annual reports from the director of the Mint have for some years past exhibited the amount of gold received for coinage. On referring to those decuments, it appears that the amount received from the southern States has increased very considerably within several years. Previous to 1824 the supply from domestic sources bore a very small proportion to the whole amount coined, and did not in fact exceed \$3,000 yearly. During the year 1829, however, we perceive that the gold of the United States received at the Mint amounted to about \$134,000; being nearly equal to the foreign supply for the same period; and it is understood from a satisfactory source that the amount received from the southern States within the first three quarters of the previous year has been nearly \$320,000, while that received from foreign sources within the same period amounts to little more than half that sum. than half that sum.
[Philadelphia Gazette, of Nov. 13, 1830.

The above statement, it will be perceived, was published nearly twenty-seven years ago. The Gazette regarded it as a matter of congratulation that the yield of domestic gold had increased from \$3,000 in the year 1824 to \$320,000 for the first three quarters of the year 1829. What a change has taken place since the above article was penned! The Gazette has been swept away by fast papers and fast presses, and our annual yield of domestic gold now exceeds fifty millions of dollars, while the mines of Australia contribute sixty millions annually to the increasing wealth of the world, and those of Russia

The democratic State convention of Alabama, to nominate a candidate for governor, will meet on Mon-